

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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PAINTING AND DECORATING
CONTRACTORS OF AMERICA
SOUTHERN NEVADA CHAPTER,

Plaintiff,

v.

INTERNATIONAL UNION OF PAINTERS
AND ALLIED TRADES DISTRICT
COUNCIL 15 LOCAL UNION 159 and
WESTERN WALL & CEILING
CONTRACTORS ASSOCIATION,

Defendants.

2:07-CV-01271-LRH-LRL

ORDER

Before the court is Plaintiff Painting and Decorating Contractors of America Southern Nevada Chapter's ("PDCA") Motion to Voluntarily Dismiss Answer to Counterclaim and for Order Compelling Arbitration. (#41¹.) Defendant International Union of Painters and Allied Trades District Council 15 Local Union 159 ("the Union") filed an opposition (#43) to which Plaintiff replied (#45).

I. Facts and Procedural History

PDCA is an employer association that entered into a collective bargaining agreement with

¹Refers to the court's docket entry number

1 the Union effective July 1, 2007. In its first amended complaint, PDCA alleged that after the Union
2 executed the collective bargaining agreement, it entered into a separate agreement with Western
3 Walls and Ceilings Contractors Association ("WWCCA") that breaches the Union's obligations
4 under the collective bargaining agreement.

5 On December 19, 2007, the Union filed an answer to the first amended complaint and
6 asserted a counterclaim. The Union's counterclaim alleges that PDCA's complaint is subject to the
7 grievance and arbitration procedure specified in their collective bargaining agreement, and
8 therefore PDCA's claims should be referred to arbitration.

9 On March 27, 2008, the Union filed a motion to dismiss PDCA's first amended complaint
10 for failure to exhaust a nonjudicial remedy. On September 17, 2008, pursuant to a stipulation
11 between PDCA and the Union, PDCA filed a second amended complaint. The second amended
12 complaint added WWCCA as a defendant, alleging that WWCCA breached obligations to PDCA
13 by entering into its agreement with the Union.

14 On October 8, 2008, this court issued an order granting the Union's motion to dismiss. In
15 its order, the court recognized that after the Union filed its motion to dismiss, PDCA filed a second
16 amended complaint. Nevertheless, the court considered the motion to dismiss as through it were
17 addressed to the second amended complaint because the second amended complaint did not
18 materially alter the nature of PDCA's claims against the Union.

19 After the court issued its October 8, 2008, order, PDCA and WWCCA moved to voluntarily
20 dismiss their claims against each other. Thus, the only claim is remaining in this action is the
21 Union's counterclaim against PDCA.

22 **II. Discussion**

23 PDCA now brings two motions. Its first motion asks this court to "dismiss its answer" to
24 the Union's counterclaim in which PDCA denies that its case should be referred to arbitration.
25 PDCA's second motion asks this court for an order compelling arbitration in accordance with the
26

1 Union's counterclaim.

2 The apparent catalyst for the present motions is the Union's reluctance to arbitrate PDCA's
3 claims once this court granted the Union's motion to dismiss. In support of its motions, PDCA
4 submits evidence that after this court issued its October 8, 2008, order, counsel for the Union
5 indicated that the Union did not believe arbitration was appropriate because PDCA had waived its
6 right to arbitration by filing suit in this court. (*See* October 21, 2008, Letter (#41) Ex. B.) Thus,
7 PDCA now wants to compel arbitration that the Union originally sought but now apparently
8 opposes.

9 The difficulty with PDCA's present motions is its failure to file any pleadings that support
10 the relief it presently seeks. Therefore, in the interest of judicial economy the court will grant
11 PDCA up to 30 days to file an amended complaint seeking to compel arbitration and such other
12 relief as it may deem appropriate. Furthermore, because the Union's counterclaim and PDCA's
13 answer to the counterclaim may bear upon the sufficiency of any amended complaint, the court
14 denies PDCA's present motions without prejudice to bringing them at a later time.²

15 IT IS THEREFORE ORDERED that PDCA's Motion to Voluntarily Dismiss Answer to
16 Counterclaim and for Order Compelling Arbitration (#41) is DENIED without prejudice.

17 IT IS FURTHER ORDERED that PDCA is granted up to 30 days to file an amended
18 complaint.

19 IT IS SO ORDERED.

20 DATED this 18th day of June, 2009



21
22 LARRY R. HICKS
23 UNITED STATES DISTRICT JUDGE

24
25 ²The court denies the Union's motion to dismiss its counterclaim, without prejudice to bringing it at
26 a later time, for the same reason.